

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LISA YEAGER

Claimant

VS.

MORTGAGE CENTRAL LLC

Respondent

AND

TWIN CITY FIRE INSURANCE CO.

Insurance Carrier

Docket No. 1,023,577

ORDER

Respondent and its insurance carrier requests review of the August 18, 2005 Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

Claimant alleged injuries suffered as a result of a physical altercation with a co-worker. Respondent alleged that claimant was not an employee when the incident occurred because her employment had just been terminated. Consequently, respondent argued the parties are not covered by the Workers Compensation Act.

The Administrative Law Judge (ALJ) found the claimant remained an employee for workers compensation coverage purposes until she had safely left the premises.

The respondent requests review of whether the ALJ exceeded his jurisdiction in finding the claimant was considered an employee of the respondent and whether the claimant's injury arose out of and in the course of employment. Respondent argues the claimant had been terminated before the alleged injury on March 11, 2005, and therefore was not an employee of the respondent because it no longer had the right to control her activities.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed as a senior loan officer for respondent. She had been employed for over four months. The claimant had been told some new employees were being hired, that they were getting her office space and she would be relocating to an office cubicle. On March 11, 2005, claimant was setting up her cubicle and arranging her office supplies when she was called into her supervisor's office. Claimant had some paperclips, pencils and a pair of scissors in her hand at that time. She thought the discussion was only going to take a few minutes so she carried those items in her hands when she went into her supervisor's office.

After this point there is conflicting testimony regarding the nature of the meeting as well as the physical altercation that followed claimant's meeting with her supervisor.

Claimant recalled the conversation was about whether she had contacted the new employees' former employer. Another supervisor also came into the office and entered the discussion. Claimant also noted that her supervisor said something about terminating her employment but as she left the office she was uncertain whether or not she had been terminated. But claimant did agree she asked whether she would get her paycheck and further questioned the reason why she was being terminated.

As claimant was leaving Ms. Dozier's office to head back to her cubicle, to get her things so she could leave, she was confronted by Jonathan Adams about the scissors which were still her hand. Claimant testified that Mr. Adams grabbed and twisted her arm to have her put down the scissors. She further testified she was pushed to the ground and could not get up because Mr. Adams was on top of her. After some co-workers intervened and helped her up she kicked at Mr. Adams because claimant testified he was again coming after her. Mr. Adams then grabbed claimant's foot and she again fell to the floor.

After claimant got back up she went to her cubicle to gather her belongings. The police had been called and after claimant finished gathering her belongings she went downstairs and waited in the lobby for the police to arrive. After the police arrived claimant gave her version of the incident and was advised to leave the premises. Claimant and Tracy Osterkamp, a co-worker, then went to a restaurant for a drink. Claimant then sought medical treatment at St. Luke's emergency room later that night or early the next morning. Claimant testified she injured her back, knee and ankle in the physical altercation at work.

Ms. Osterkamp, a loan officer for the respondent, testified she was standing outside Ms. Marcia Dozier's office and could hear claimant and Ms. Dozier talking loudly. The door then opened and she heard claimant ask why she was being fired. Ms. Dozier then stated she could fire claimant for any reason to which claimant responded that she needed paid

and would not leave until paid. Ms. Dozier requested that somebody call the police. At that point, Mr. Michael Brady asked claimant what she had in her hands and asked claimant several times to drop the scissors. Mr. Adams then grabbed the scissors from claimant's hand and the next thing Ms. Osterkamp recalled was that Mr. Adams took claimant to the floor. She stated that Mr. Adams was pulled off claimant and claimant was helped up but that Mr. Adams came at claimant again, claimant kicked at him and Mr. Adams grabbed her leg and claimant again fell to the floor. After the combatants were again separated, Ms. Osterkamp helped claimant gather some belongings and they left. Ms. Osterkamp was later called and told her employment had been terminated. Finally, Ms. Osterkamp testified that when Mr. Adams grabbed claimant and took her to the ground, the claimant did not appear to be making any aggressive moves towards anyone.

David Patterson, respondent's loan officer, found the claimant and Mr. Adams already arm locked. He tried to separate the two of them. Mr. Patterson testified the claimant tried to kick Mr. Adams but she did not scratch his face.

Ms. Dozier, respondent's owner, testified the claimant was having problems with closing loans according to their agreement. Ms. Dozier had advised the claimant on a monthly basis that she needed to close more loans. Ms. Dozier decided on March 11, 2005, to terminate the claimant since she did not have any loans in the pipeline and because of her production. Ms. Dozier then asked Michael Brady to be a witness for firing the claimant and she asked Mr. Adams to take a box to claimant's cubicle and start packing her things.

Q. Did you indeed advise her she was terminated?

A. Yes, I did.

Q. And at that point what was her reaction?

A. She told me that she wanted me to put it in writing.

Q. Did she become somewhat combative to you at all?

A. She was very combative. She was angry. She raised her voice. She asked me why and I told her, I said, "Lisa, you've had production issues, we've talked about that. You don't want to work for my new sales manager. You've been in my office five times. You've been very controversial in the sales meeting and you and I had a conversation several weeks ago where we said we would just shake hands and say God bless." She asked me about the paycheck. I said, "Pay day is on the 15th. It's done electronically through ADP. I can't write you a check today, but on the 15th I'll mail you a paycheck."¹

¹ P.H. Trans. at 64-65.

Ms. Dozier asked the claimant to get her things and leave. Ms. Dozier then noticed that claimant had a pair of scissors in her hand and Ms. Dozier was frightened. Mr. Brady told claimant to put the scissors down. Ms. Dozier then told her secretary to call the police.

Ms. Dozier testified the claimant had made threats toward her with the scissors and that Mr. Adams was able to get the scissors out of the claimant's hands. Ms. Dozier further testified the claimant was the first to begin swinging her fists at Mr. Adams.

Mr. Brady, vice-president/general manager, testified that on March 11, 2005, it had been decided that the claimant was to be terminated due to her poor performance and lack of team player concept. Mr. Brady testified he was present during the conversation between Ms. Dozier and the claimant with regard to claimant's termination. After he noticed claimant had scissors in her hand, he asked her several times to put them down but as the loud argument claimant was having with Ms. Dozier continued Mr. Brady stepped outside the office to call the police.

Mr. Adams, one of respondent's partners, was asked by Ms. Dozier to pack the claimant's belongings so that it would expedite her leaving the premises. As he was performing that task he heard the loud argument and went toward Ms. Dozier's office. Mr. Adams testified he was concerned for everyone's safety when he saw claimant holding the scissors so he asked the claimant several times to put the scissors down. When the claimant did not put the scissors down, he made an attempt to get them from the claimant and was successful. He testified the claimant then came at him with fists swinging. The claimant went for Mr. Adams and he disposed of the scissors into an empty cubicle. Mr. Adams then wrestled claimant to the ground. After Mr. Patterson helped them up claimant again came at Mr. Adams kicking, he grabbed her leg and she again fell down. Mr. Adams testified the claimant scratched his face, arms and chest.

There is conflicting testimony regarding the physical confrontation but the evidence clearly establishes that claimant's employment with respondent was terminated during her meeting with Ms. Dozier and Mr. Brady. Although the claimant testified that she was uncertain whether she had been fired after her meeting with Ms. Dozier, the evidence does not support her contention. The two supervisors' testimony is corroborated by Ms. Osterkamp that claimant's employment was terminated in the meeting.

Afterwards claimant became angry and was refusing to leave until she got her paycheck. The claimant was asked to put down the scissors in her hand and then Mr. Adams grabbed claimant and took the scissors. A physical altercation followed with claimant being taken to the floor on two occasions.

The respondent argues that because claimant's employment had been terminated she was no longer an employee. Consequently, her injuries, if any, did not arise out of and in the course of her employment. The Board disagrees.

In *2 Larson's Workers' Compensation Law*, Chapter 26, it is stated in pertinent part:

Injuries incurred by an employee while leaving the premises, collecting pay, or getting his clothing or tools within a reasonable time after termination of the employment are within the course of employment, since they are normal incidents of the employment relation.

The treatise notes that compensation coverage is not automatically and instantaneously terminated by the firing or quitting of the employee because the employee is deemed to be within the course of employment for a reasonable period while winding up the relationship and leaving the premises. In determining what is a reasonable period the treatise notes:

Moreover, the allowed interval should be long enough to encompass the incidents that flow directly from the employment, although they may take effect after employment has technically ceased. Not infrequently when a person is fired, there is a backwash of anger which may lead to injury, as when a foreman assaults an employee he has just fired. Compensation is clearly called for when an incident of this kind occurs shortly after the firing.²

Once the claimant was fired, an employment related incident occurred and claimant was injured as a result of that situation. The physical altercation occurred before claimant had the opportunity to collect her belongings and leave the employer's premises. Stated another way, the firing of claimant was an integral part of the employment relationship and any injuries arising from the firing were causally connected to the employment. Thus, the injury arose in the course of employment.

In order for a claimant to collect workers compensation benefits she must suffer an accidental injury that arose out of and in the course of her employment. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.³

The Board must next consider whether claimant's injuries arose out of her employment. Altercations between workers, resulting in injuries, usually do not arise out

² *2 Larson's Workers' Compensation Law* § 26.01 at 26-2 (2005).

³ *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

of employment, and generally will not be compensable.⁴ However, if an employee is injured in a dispute with another employee over the conditions and incidents of the employment, then the injuries are compensable.⁵

Whether claimant or Mr. Adams began the assault is irrelevant. If the injury by assault arises out of and in the course of employment, it is compensable without regard to whether claimant was the aggressor in the confrontation. In *Springston*, the Court, in Syllabus 3, stated the general rule regarding assaults arising out of an incident of employment:

If an injury by assault arose out of and in the course of employment, it is compensable without regard to whether the claimant was the aggressor in the confrontation.⁶

Regardless of whether claimant threw the first punch or whether Mr. Adams attacked claimant, the dispute was centered around the claimant's employment termination and her perceived threats against her supervisor. This employment involvement ultimately led to the injuries suffered by claimant. Because the assault, either with or without claimant as the aggressor, was directly associated with her termination from her job, the Board finds claimant's injuries did arise out of her employment with respondent.

WHEREFORE, it is the finding of the Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated August 18, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2005.

BOARD MEMBER

c: Kathryn P. Barnett, Attorney for Claimant
Mark J. Hoffmeister, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ *Addington v. Hall*, 160 Kan. 268, 160 P.2d 649 (1945); *Romerez v. Swift & Co.*, 106 Kan. 844, 189 P. 923 (1920).

⁵ See *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 506-507, 704 P.2d 394, rev. denied 238 Kan. 878 (1985).

⁶ *Id.*